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Submission Reference: Anticipated Joint Venture Between Vodafone Group PLC and CK Hutchison Holdings Limited Concerning Vodafone Limited and Hutchison 3G UK Limited – Notice of Possible Remedies

27 September 2024

Dear Mr. McIntosh,

[✂] welcomes the opportunity to respond to the Competition & Market Authority (**CMA**) notice of possible remedies under Rule 12 of the CMA's Rules of Procedure for Merger, Market and Special Reference Groups in the anticipated joint venture between Vodafone Group PLC and CK Hutchinson Holdings Limited concerning Vodafone Limited (**VUK**) and Hutchison 3G UK Limited (**3UK**), hereinafter referred to as the Notice of Possible Remedies.

Overall, we agree with the CMA's view that a substantial lessening of competition (**SLC**) in the supply of wholesale mobile telecommunication services in the United Kingdom will result as a result of the anticipated merger between VUK and 3UK. The merger would reduce the number of mobile network operators (**MNOs**) from four to three, making it more difficult not only for Mobile Virtual Network Operators (**MVNOs**), but also Mobile Virtual Network Aggregators (**MVNAs**) and Mobile Virtual Network Enablers (**MVNEs**), to secure competitive terms and conditions, restricting the ability of MVNOs, MVNAs and MVNEs to offer the best deals to their respective customers. We also agree with CMA's initial assessment that a network investment commitment (**Investment Commitment**) will:

- a. not by itself comprehensively address the SLC identified by CMA in the wholesale market; and
- b. have a greater impact on competition in the retail market versus the wholesale market.

In order to allow the merge between VUK and 3UK to proceed, based on the CMA's Provisional Findings Report we believe that the CMA must impose remedies that:

- a. promote competition in the retail and wholesale markets.
- b. ensure competitive and transparent pricing structures for the network services provided, ensuring that MVNOs, MVNAs and MVNEs can offer attractive rates to their respective customers.
- c. are subject to robust monitoring and compliance mechanisms.
- d. are subject to regular reporting by the merged entity to help track progress and identify any issues early on.
- e. are flexible enough to adapt to changing market conditions allowing for periodic reviews and adjustments to the remedies as necessary.
- f. engage stakeholders in monitoring the remedies to provide additional oversight and ensure that they are effective.



The global mobile virtual network operator market is forecast to expand at a CAGR of 7.8% and thereby increase from a value of US\$79.8 billion in 2023 to US\$135 billion by the end of 2030.¹ The growth trend is being driven by:

- a. MVNEs and MVNAs that assist MVNOs in managing their operations, reducing barriers to entry, and accelerating time-to-market.
- b. MVNOs diversifying their portfolios, offering a range of services beyond traditional voice and data services targeting specific consumer demographics, by including internet of things (**IoT**) and machine-to-machine (**M2M**) connectivity, value-added services, and specialized plans targeting specific industries.

We therefore welcome the fact that CMA is seeking comments on possible remedies it has identified for the purpose of rectifying the SLCs identified in the Provisional Findings Report. In this regard, we broadly support a combination of structural remedies involving a partial divestiture remedy in conjunction with behavioural remedy consisting of an Investment Commitment, time limited retail protection and wholesale market access. Despite this, we will concentrate our feedback on the CMA's inquiries regarding wholesale market remedies, as outlined in paragraphs 62 to 65 of the Notice of Proposed Remedies.

About [✂]

[✂]

We are happy to engage further with the CMA and provide any additional information or clarification that the CMA may require.

Yours sincerely,

[✂]

Email: [✂]

Telephone: [✂]

¹ <https://www.persistencemarketresearch.com/market-research/mobile-virtual-network-operator-market.asp>



**Anticipated Joint Venture Between Vodafone Group PLC and CK Hutchison Holdings Limited
Concerning Vodafone Limited and Hutchison 3G UK Limited**

**[Redacted]'s Response to the Notice of Possible Remedies
Published by the CMA on 13 September 2024**



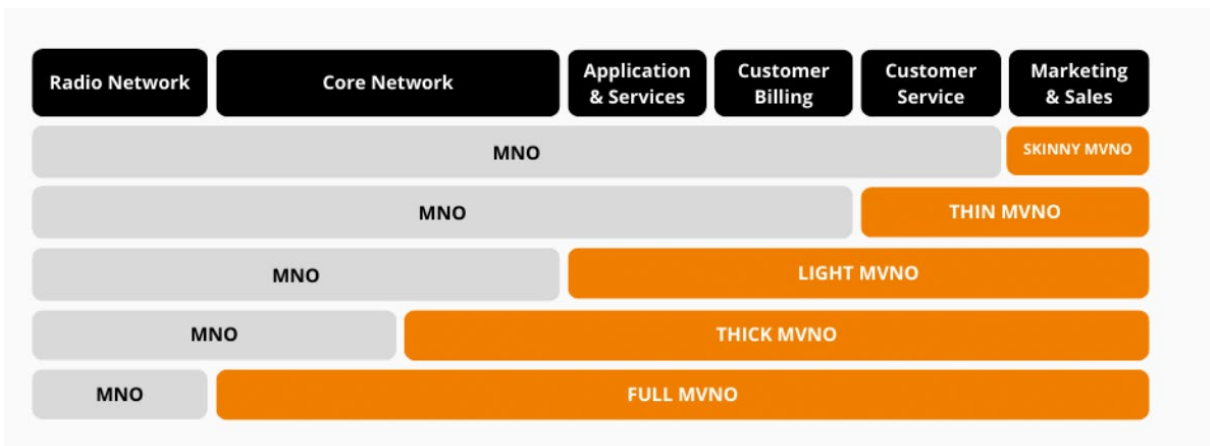
Question 62(a)(i) Whether it would constitute an effective remedy capable of eliminating or preventing the provisional SLC and its adverse effects in the Wholesale Market.

Pre-agreed access terms can contribute to mitigating the SLC in the wholesale market, but they fall short as a standalone solution as the telecommunications market is highly dynamic, with rapid technological advancements and changing customer demands. As such, pre-agreed access terms can become quickly outdated and fail to address new competitive challenges presented by new and evolving use case and technology such as MVNO that address the market for Internet of Things (IoT) and machine-to-machine (M2M) connectivity.

Question 62(a)(ii) What the key terms are that need to be offered to MVNOs.

There are five different types of MVNOs as illustrated by Figure 1.²

Figure 1: Types of MVNOs



In addition, MVNOs in the United Kingdom also rely on MVNAs and MVNEs to provide their services. MVNAs and MVNEs therefore also require wholesale access from MNOs. MVNA buy wholesale mobile and data services from MNOs and resells them to MVNOs. MVNE provides the infrastructure and operational support services that MVNOs need to offer mobile services. This includes systems for billing, customer relationship management (CRM), provisioning, and SIM management.

In light of the different type of actors in the ecosystem when combined with the diversification of MVNOs portfolio and evolving technological advances there is not a predefined set of key access terms

² See <https://mvno-index.com/different-types-of-mvnos-mobile-brands/>



that need to be offered to MVNOs, MVNAs and MVNEs. Notwithstanding the same some key terms included:

- a. Information on the extent and quality of network access provided, including coverage areas, data speeds, and any limitations or prioritization policies.
- b. Competitive and transparent pricing structures for the network services provided, ensuring that MVNOs, MVNAs and MVNEs can offer attractive rates to their respective customers.
- c. Detailed Service Level Agreements (**SLAs**) that outline performance standards, including uptime guarantees, data speeds, and response times for issue resolution. SLAs are of particular importance in access agreements for skinny, thin, light and thick MVNOs.
- d. Comprehensive technical support provisions, including maintenance, troubleshooting, and upgrades to ensure seamless service delivery. These provisions are of particular importance in access agreements for skinny, thin, light and thick MVNOs.
- e. Provisions to report on planned and unplanned radio network outages to ensure that MVNOs, MVNAs and MVNEs, can inform their respective customers in advance, manage customer support and provide accurate updates to customers.
- f. Detailed provision on planned radio network expansion to allow MVNOs, MVNAs and MVNEs to plan their own service offerings and marketing strategies.
- g. The length of the agreement, conditions for renewal, early termination, and migration to another MNO, MVNA or MVNE.
- h. Provisions for access to new technologies and network upgrades, allowing MVNOs, MVNAs and MVNEs to stay competitive and offer advanced services to their respective customers.
- i. Guarantees that MVNOs, MVNAs and MVNEs receive non-discriminatory terms compared to other wholesale customers or the MNO's own retail and wholesale operations including for the avoidance of doubt all the MNOs affiliated companies not only in the UK but abroad.
- j. MVNOs, MVNAs and MNVEs should not be subject to exclusivity arrangements. This is of particular importance for certain uses case that require more than one network such as those involving the provision of eCall services.

We would like to add that wholesale access can be provided not only through traditional MVNO agreements but also through permanent roaming agreements. Permanent roaming agreements are particularly relevant for IoT and M2M use cases, including but not limited to connected cars use cases that support open internet access.

Question 62(a)(iii) How the CMA should determine what constitutes fair and reasonable terms, including concerning price.



We believe that the best method for the CMA to determine that fair and reasonable terms, including pricing are being offered to MVNOs, MVNAs and MVNEs is by requiring wholesale access agreements to be made public. Making wholesale access agreements publicly available increases transparency, allowing all stakeholders to see the terms and conditions under which services are provided. This helps prevent discriminatory practices and ensure fair and reasonable terms by allowing MVNOs, MVNAs and MVNEs to compare their terms with those of other wholes access seekers. It also makes it easier for CMA to monitor compliance with fair pricing and non-discrimination rules.

Question 62(a)(iv) Whether pre-agreed wholesale access terms should be offered up to a specified number of MVNOs or cover a proportion of the Merged Entity's network capacity.

We do not believe that any limit should be placed on the number of MVNOs, MVNAs or MVNEs that should be offered pre-agreed wholesale access terms or the amount of the Merged Entity's network capacity that should be covered by the pre-agreed wholesale access terms. In a market characterised by rapid technological advancements new entrants often bring fresh ideas and innovative business models to the market. As such, such limits could stifle innovation and prevent the development of new services and technologies. In addition, imposing limits does not align with supporting a level playing field or the principles of fair competition.

Question 62(a)(v) How the CMA might determine the appropriate length of time for such a commitment.

We believe that the commitment should not be time limited. However, we recognize the need for provisions that allow for periodic review and adjustment of the wholesale access remedy. This ensures not only its continued necessity but also identifies any adjustments needed to maintain its effectiveness over time. The review process should involve input from affected parties, including competitors, customers, and other stakeholders, to highlight practical considerations and potential unintended consequences. Such a review mechanism will enable the CMA to adapt the wholesale access remedy in response to evolving market conditions.

Question 62(a)(vi) How disputes might be dealt with and what potential role the CMA or an independent adjudicator/monitoring trustee might take in this process

Disputes over wholesale access can be complex and require a structured approach to resolution. Moreover, once disputes arise, they need to be resolved promptly (*i.e.*, within four months) to prevent any one party gaining an unfair advantage due to prolonged disputes. In this regard we believe that disputes are best handled by an independent adjudicator that has the power to make binding decisions.



A monitoring trustee can attempt to mediate dispute between parties by offering an impartial perspective to facilitate resolution before a more formal independent adjudication.

- Question 62(b) Questions in relation to capacity ring-fencing:
- (i) Whether a remedy that ring-fenced network capacity in the Parties' network for MVNOs would sufficiently incentivise the Merged Entity to compete for MVNO customers.
 - (ii) How the CMA could design a capacity ring-fencing remedy.
 - (iii) How much of the Merged Entity's network capacity should be ringfenced for MVNOs.
 - (iv) How the CMA might determine the appropriate length of time for such a commitment.

Please refer to our response to Question 62(a)(iv).

- Question 63 Whether a monitoring trustee would be well placed to monitor such commitment.

We welcome the appointment of a monitoring trustee to monitor the wholesale access commitment by the merged entity. If the CMA determines that it will not require wholesale access agreements to be made public, they should nevertheless be provided to the monitoring trustee to ensure that the merged entity is meeting its commitment.

- Question 64 We invite views on whether there are other measures that would address the provisional SLCs identified in the Retail and Wholesale Markets.

The pre-agreed wholesale access commitment of the merged entities should encompass not only MVNOs but also MVNAs and MVNEs for several important reasons:

- a. Including MVNAs and MVNEs in the commitment helps maintain a level playing field. MVNAs and MVNEs play crucial roles in the telecommunications ecosystem of the United Kingdom by enabling MVNOs to enter the market and compete effectively. Excluding them could lead to an unfair competitive advantage for the merged entity.
- b. MVNAs and MVNEs contribute to market diversity by supporting a variety of MVNOs with different business models and target markets. This diversity fosters innovation and provides consumers with more choices.



- c. MVNAs and MVNEs provide essential services such as billing, customer relationship management (**CRM**), and network provisioning. Ensuring they also have access to wholesale terms allows them to continue supporting MVNOs efficiently, which in turn benefits end consumers.
- d. Including MVNAs and MVNEs in the wholesale access commitment aligns with regulatory objectives to promote competition and prevent monopolistic practices.
- e. By encompassing MVNAs and MVNEs, the commitment helps ensure that consumers benefit from the efficiencies and innovations these entities bring to the market.

Question 65

More broadly, we invite views on any legal and practical challenges associated with any of the above proposed remedies. We also invite views on what potential role Ofcom could undertake in implementing, monitoring and enforcing any of the above remedies.

While imposing behavioural remedies in mergers can be challenging, we believe that the CMA can mitigate these challenges by:

- a. Establishing clear monitoring mechanisms by appointing independent monitoring trustees, to ensure compliance with the wholesale access remedy.
- b. Involving stakeholders, including competitors, customers, and other interested parties, in the monitoring process.
- c. Designing remedies that are flexible enough to adapt to changing market conditions. Including provisions for periodic reviews and adjustments ensures that the remedies remain effective over time.
- d. Ensuring transparency in the implementation and monitoring of the wholesale access remedy through the periodic publication of compliance reports by an independent monitoring trustee.

Ofcom as the sectoral regulator could play a key role in implementing, monitoring and enforcing the remedies if it has the capacity to undertake the same or is provided with the additional capacity it requires.